

**FEDERAL COMMUNICATIONS COMMISSION**  
**Enforcement Bureau**  
**Market Disputes Resolution Division**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, DC 20554**

July 24, 2015

**Email and First-Class Mail**

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Re: *NTCH, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, EB Docket No. 14-212, File No.  
EB-13-MD-006

Dear Counsel:

On March 24, 2015, we held an initial status conference in the above-referenced matter pursuant to 47 C.F.R. § 1.733(a). The conference, attended by representatives of Complainant, NTCH, Inc. (NTCH), and Defendant, Cellco Partnership d/b/a Verizon Wireless (Verizon), was convened in order to narrow the issues in dispute and resolve discovery issues.<sup>1</sup> On April 2, 2015, we issued a letter ruling which, among other things, denied two NTCH interrogatories, but granted the complainant leave “to submit a more focused request” for the information sought in those interrogatories after the parties had exchanged discovery responses.<sup>2</sup> The *April 2<sup>nd</sup> Ruling* also established a deadline for NTCH to file “any

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<sup>1</sup> See NTCH’s First Set of Discovery Requests (filed July 2, 2014); Verizon’s Opposition to NTCH’s First Set of Discovery Requests (filed Aug. 4, 2014); NTCH’s Reply to Verizon’s Opposition to Discovery Requests (filed Aug. 22, 2014); Verizon’s First Set of Interrogatories (filed Aug. 4, 2014); NTCH’s Response to Verizon’s First Set of Interrogatories (filed Aug. 22, 2014); NTCH’s Second Set of Discovery Requests (filed Aug. 22, 2014); Verizon’s Opposition to NTCH’s Second Set of Discovery Requests (filed Aug. 29, 2014). See also Letter from Donald J. Evans, Counsel for NTCH, and Andre J. Lachance, Counsel for Verizon, to Marlene H. Dortch, FCC (filed Sept. 30, 2014) (attaching Joint Statement of NTCH and Verizon).

<sup>2</sup> Letter from Rosemary McEnery, FCC, to Donald J. Evans, counsel for NTCH, and Andre J. Lachance, counsel for Verizon, at 3 (*April 2<sup>nd</sup> Ruling*) (denying NTCH Interrogatory Nos. 3 and 9, but granting NTCH leave to submit “a more focused request” for the information sought in the first sentence of Interrogatory No. 3 (Verizon’s rationale where roaming rates offered to other carriers differ from roaming rates offered to NTCH) and Interrogatory No. 9 (identity of individuals who were the source of Interrogatory answers or who have knowledge of particular matters)).

supplemental discovery requests authorized by this Letter Ruling.”<sup>3</sup> On April 17, 2015, we issued a letter at NTCH’s request clarifying certain aspects of the *April 2<sup>nd</sup> Ruling*.<sup>4</sup>

Before us is NTCH’s request for supplemental discovery, which includes ten supplemental interrogatories and a document production request.<sup>5</sup> Based on the record before us, including NTCH’s supplemental discovery requests, Verizon’s objections, and the prior agreements reached by the parties in this case, we rule as follows:

- 1) Supplemental Interrogatory No. 1, which seeks international roaming information, is denied. We have twice denied NTCH’s request for this information, and NTCH has offered no basis for us to revisit those determinations.<sup>6</sup>
- 2) Supplemental Interrogatory No. 2, which seeks further information regarding Verizon’s Response #3, is granted to the extent that it seeks clarification.<sup>7</sup> In particular, Verizon is directed to clarify its response by describing the discounts off of the monthly per-line access fee that are mentioned in Response #3 and footnote 1, and in footnote 5.
- 3) Supplemental Interrogatory No. 3, which seeks additional information regarding Verizon’s MVNO/wholesale rates, is denied. The information requested exceeds the scope of supplemental discovery authorized by the *April 2<sup>nd</sup> Ruling*, and NTCH has provided no justification for failing to seek discovery of this information within the timeframes and limitations provided in 47 C.F.R. § 1.729(a).<sup>8</sup>
- 4) Supplemental Interrogatory No. 4, which seeks information regarding “voice and data plans which remain available to or in use by wholesale or retail customers, but which are no longer offered for sale to new customers[,]” is denied. NTCH has failed to demonstrate the relevance of legacy rate plans to the material issues in dispute or how discovery of such information is necessary to the resolution of this dispute.<sup>9</sup>

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<sup>3</sup> *Id.* at 4. On June 17th, we extended the deadline for filing supplemental discovery requests. *See* Letter to Counsel for NTCH and Verizon from Rosemary McEnery, FCC, EB Docket No. 14-212, File No EB-13-MD-006 (dated June 17, 2015), at 5. *See also* NTCH Request for Additional Time to File Supplemental Discovery (filed April 30, 2015).

<sup>4</sup> *See* Letter to Counsel for NTCH and Verizon from Rosemary McEnery, FCC, EB Docket No. 14-212, File No EB-13-MD-006 (dated April 17, 2015) (*April 17<sup>th</sup> Ruling*). *See also* Letter to Rosemary McEnery, FCC, from Donald Evans, Counsel for NTCH (dated April 3, 2015) (requesting clarification of *April 2<sup>nd</sup> Ruling*).

<sup>5</sup> *See* Supplemental Discovery of NTCH, Inc. (filed June 30, 2015) (Supplemental Discovery Request). *See also* Verizon Opposition to Supplemental Discovery (filed July 10, 2015) (Verizon Opposition).

<sup>6</sup> *See April 2<sup>nd</sup> Ruling* at 3 n.12; *April 17<sup>th</sup> Ruling* at 2-3.

<sup>7</sup> *See* Verizon’s Response to NTCH’s Interrogatories (filed April 27, 2015) (Verizon’s Response), at 1-2.

<sup>8</sup> 47 C.F.R. § 1.729(a), (b) provides that a complainant may file up to 10 interrogatories “with its complaint” and up to 5 interrogatories with its reply. Such requests must explain “why the information sought in each interrogatory is ... necessary to the resolution of the dispute.”

<sup>9</sup> *See* 47 C.F.R. § 1.729(a), (b).

- 5) Supplemental Interrogatory No. 5, which seeks information regarding the volume of inbound and outbound data roaming traffic represented by each roaming agreement listed in Verizon's Response #1, is denied. The requested information exceeds the scope of supplemental discovery authorized by the *April 2<sup>nd</sup> Ruling*, and NTCH has provided no justification for failing to seek discovery of this information within the timeframes and limitations provided in 47 C.F.R. § 1.729(a). In addition, we agree with Verizon that Supplemental Interrogatory No. 5 exceeds the scope of information that the parties agreed to exchange in discovery and is therefore inconsistent with the parties' agreement.<sup>10</sup>
- 6) Supplemental Interrogatory No. 6, which seeks a "rationale for the difference in rates to different carriers" listed in Exhibit A to Verizon's Response, is denied. Although the *April 2<sup>nd</sup> Ruling* granted NTCH leave to seek supplemental discovery relating to the subject of this request, NTCH has not submitted a more focused request, as instructed in the ruling.<sup>11</sup> For that reason and because the language of Supplemental Interrogatory No. 6, is vague and ambiguous, this interrogatory is denied.
- 7) Supplemental Interrogatory No. 7, which seeks clarification of Verizon's self-described status as a "Net Payer" in connection with particular roaming agreements, is granted. Because we agree with NTCH that it is not apparent which services were included in this determination,<sup>12</sup> Verizon is directed to provide the clarification requested in Supplemental Interrogatory No. 7.
- 8) Supplemental Interrogatory No. 8, which seeks information about agreements between Verizon and a Mexican telecommunications carrier and its affiliate, and No. 9, which seeks information about Verizon's alleged strategy to eliminate competition, are both denied. The requested information exceeds the scope of supplemental discovery authorized by the *April 2<sup>nd</sup> Ruling*, and NTCH has provided no justification for failing to seek discovery of this information within the timeframes and limitations provided in 47 C.F.R. § 1.729(a). In addition, this request does not appear to be intended to obtain information necessary for the resolution of issues in dispute in this proceeding and, instead, appears to be improperly relying upon discovery as "the primary means of determining if a claim exists."<sup>13</sup>
- 9) Supplemental Interrogatory No. 10, which seeks information about volume commitments in Verizon's roaming agreements, is denied. The requested information exceeds the scope of supplemental discovery authorized by the *April 2<sup>nd</sup> Ruling*, and NTCH has provided no justification for failing to seek discovery of this information within the timeframes and limitations provided in 47 C.F.R. § 1.729(a). In addition, we agree with Verizon that Supplemental Interrogatory No. 10 exceeds the scope of information that the parties agreed to exchange in

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<sup>10</sup> See Verizon Opposition at 5.

<sup>11</sup> *April 2<sup>nd</sup> Ruling* at 3.

<sup>12</sup> Supplemental Discovery Request at n.7.

<sup>13</sup> *Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22549, para. 117 (1997).

discovery and is therefore inconsistent with the parties' agreement.<sup>14</sup> Finally, NTCH has not sufficiently demonstrated why this information is necessary to the resolution of the parties' dispute.

- 10) In its Supplemental Document Request, NTCH asks that Verizon be required to produce "any documents identified pursuant to the foregoing agreements." We deny this request as vague and ambiguous. In addition, the requested information exceeds the scope of supplemental discovery authorized by the *April 2<sup>nd</sup> Ruling* and is inconsistent with the parties' agreement, as memorialized in that ruling, that Verizon would produce a chart reflecting certain categories of information relating to Verizon's roaming agreements, as opposed to the agreements themselves.<sup>15</sup>

We issue this letter ruling under sections 4(i), 4(j), and 208 of the Act, 47 U.S.C. §§ 154(i), 154(j), 208, sections 1.3, 1.720-1.736, and 20.12(e)(2) of the Commission's rules, 47 C.F.R. §§ 1.3, 1.720-1.736, 20.12(e)(2), and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

Sincerely,



Rosemary McEnery  
Deputy Chief, Market Disputes Resolution Division  
Enforcement Bureau

cc: Christopher Killion, Chief, Market Disputes Resolution Division  
Lisa Boehley

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<sup>14</sup> See Verizon Opposition at 5.

<sup>15</sup> *April 2<sup>nd</sup> Ruling* at 2.